



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 24, 2013

Ordinance 17670

Proposed No. 2013-0395.1

Sponsors von Reichbauer

1 AN ORDINANCE authorizing the executive to enter into a
2 renewal of cable television franchise 5602 with
3 WAVEDIVISION I, LLC, for a period ending July 31,
4 2023.

5 **STATEMENT OF FACTS:**

- 6 1. In accordance with K.C.C. chapter 6.27A and the federal Cable Act, 47
7 U.S.C. Sec. 521 et seq., as well as regulations and orders issued by the
8 Federal Communications Commission, King County is authorized to
9 negotiate, award and renew nonexclusive franchise agreements with cable
10 television companies.
- 11 2. It is in the interests of the residents of unincorporated King County that
12 the county negotiates franchise agreements with cable television
13 companies that are willing to serve these residents.
- 14 3. County staff and the management of WAVEDIVISION I, LLC, a
15 Washington limited liability company doing business as Wave Broadband,
16 ("Wave") have negotiated a ten-year renewal of cable television franchise
17 5602.

18 4. Wave acquired this franchise from the former franchisee, Broadstripe
19 Communications. Ordinance 17251, enacted January 21, 2012, approved
20 the transfer to Wave.

21 5. Ordinance 17430, enacted October 12, 2012, approved a change in
22 control within Wave, and extended the franchise term to September 11,
23 2013.

24 6. The county has identified future cable-related needs and interests of the
25 county and its residents, has considered the financial, technical and legal
26 qualifications of Wave, and finds that renewal of this nonexclusive
27 franchise, in accordance with the terms of the franchise and franchise
28 agreement in Attachment A to this ordinance, is consistent with the public
29 interest.

30 7. The council has published its intent to consider the renewal of franchise
31 5602 in a local newspaper of broad public circulation.

32 BE IT ORDAINED BY THE COUNCIL OF KINGCOUNTY:

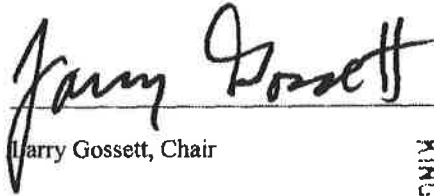
33 SECTION 1. The council hereby authorizes the executive to enter into a renewal

34 of cable television franchise 5602 held by WAVEDIVISION I, LLC, in substantially the
35 form of Attachment A to this ordinance, for a term ending on July 31, 2023.
36


Ordinance 17670 was introduced on 9/3/2013 and passed by the Metropolitan King
County Council on 9/23/2013, by the following vote:

Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr. Dembowski
No: 0
Excused: 1 - Ms. Patterson


KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Harry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 26th day of September, 2013.


Dow Constantine, County Executive

RECEIVED
2013 SEP 27 PM 3:56
CLERK
KING COUNTY COUNCIL

Attachments: A. Cable System Franchise and Agreement - WAVEDIVISION I LLC

CABLE SYSTEM FRANCHISE

AND

AGREEMENT

BETWEEN

WAVEDIVISION I, LLC,
a Washington limited liability company
d/b/a Wave Broadband,

AND

KING COUNTY, WASHINGTON

September 26, 2013

CABLE SYSTEMS
FRANCHISE NO. 5602

September 26, 2013

WAVEDIVISION I, LLC, a Washington limited liability company d/b/a Wave Broadband ("Franchisee"), has applied to King County, Washington ("County") to renew a nonexclusive franchise Franchisee holds to construct, operate and repair a Cable System in, over, along and under County streets, alleys, roads and compatible utility easement Rights-of-Way in King County, Washington, within the unincorporated portion of the area described in Appendix A for the purpose of providing cable television services.

The King County Council held a public hearing on the application on September 23, 2013.

Legal notice of the application and of the hearing was given as required by law.

The King County Council, having considered the interests proposed and advanced, found that the grant of a Franchise, subject to conditions, is in the public interest. Accordingly, the King County Council ORDERED, pursuant to Ordinance No. 17670 that a Cable System franchise is granted to Franchisee, subject to the conditions set forth in this Franchise Agreement attached as Appendix B hereto. This Franchise grants the right, subject to conditions, to construct, operate and repair a Cable System in, over, along and under County roads and Rights-of-Way within the unincorporated portions of the area described in Appendix A for the purpose of providing cable television services commencing on the Effective Date of this Franchise through and including July 31, 2023. This Franchise shall become effective when:

- I. Franchisee and County have signed this Franchise, and the Franchise Agreement attached as Appendix B; and
- II. Franchisee has made all payments, posted all securities and supplied all information that it is required to supply prior to or upon the Effective Date of this Franchise.

KING COUNTY, WASHINGTON

By: Dow Constantine

Name: Dow Constantine

Title: King County Executive

WAVEDIVISION I, LLC, a Washington limited liability company d/b/a Wave
Broadband

By: James A. Penney

Name: James A. Penney

Title: Executive Vice President

Appendix A

DESCRIPTION OF FRANCHISEE'S CABLE FACILITIES

Franchisee's facilities are located under County streets, alleys, roads and compatible utility easements throughout King County in the following described boundaries:

All those portions of unincorporated King County excluding all incorporated Cities located in the following townships and Ranges:
Township 26, Ranges 4,5,6,7,8,9,10,11,12 and 13, Township, 25, Ranges 5,6,7,8,9,10,11,12 and 13, Township 24, Ranges 6,7,8,9,10,11,12 and 13, Township 23, Ranges 3,4,5,6,7,8,9,10, 11 and 12, Township 22, Ranges 5,6,7,8,9,10 and 11, Township 21, Ranges 4,5,6,7,8,9,10,11 and 12, Township 20, Ranges 6,7,8,9,10,11 and 12, Township 19, Ranges 6,7,8,9,10 and 11.

The foregoing includes all sections within the described townships and ranges.

Appendix B

CABLE TELEVISION FRANCHISE AGREEMENT

BETWEEN

WAVEDIVISION I, LLC,
a Washington limited liability company
d/b/a Wave Broadband,

AND

KING COUNTY, WASHINGTON

FOR

FRANCHISE NO. 5602

WHEREAS, WAVEDIVISION I, LLC, a Washington limited liability company d/b/a Wave Broadband ("Franchisee"), has asked King County, Washington ("County") to renew the nonexclusive Franchises it holds to provide cable television and other services within the unincorporated part of the County; and

WHEREAS, the County has conducted proceedings in which Franchisee has participated to identify the future cable-related needs and interests of the community; to consider the financial, technical, and legal qualifications of Franchisee; and to determine whether Franchisee's plans for constructing and operating its Cable System are reasonable; and

WHEREAS, based in part upon Franchisee's representation and information, the County has determined that, subject to the terms and conditions set forth herein, renewal of Franchisee's nonexclusive franchise is consistent with the public interest; and

WHEREAS, the County is willing to issue such a franchise, conditioned on Franchisee, accepting the terms and conditions hereof; and

WHEREAS, Franchisee is willing to accept this Franchise subject to such terms and conditions and to abide by those terms and conditions:

NOW THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. Definitions.

Except as otherwise provided herein, the definitions and provisions governing the interpretation of terms set forth in King County Code, Section 6.27A.010, shall govern this Franchise Agreement. References to any County official or office also refer to any official or office that succeeds to any or all of the responsibilities of the named official or office.

References to "laws" or "applicable laws" include federal, State and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws includes laws now in effect, as the same may be amended from time to time, and new laws. In addition, the following definitions shall apply:

- (a) Affiliate. Another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.
- (b) Books and Records. Any recorded information relating to the Cable System or its management that is maintained by Franchisee in the ordinary course of business, including but not limited to information regarding construction, operation or repair of the Cable System and compliance with applicable law, in whatever form stored, including, but not limited to, electronic records and programs, and paper records.
- (c) Cable Ordinance. King County Code chapter 6.27A, as may be amended from time to time.

- (d) Cable Service. One-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (e) Cable System. Is as defined at 47 U.S.C. § 522(7), except that as used herein, it specifically refers to the Franchisee's Cable System. The term is used to refer to the Cable System as a whole, or to any part of the Cable System within the Franchise Area, including equipment or facilities appurtenant thereto.
- (f) Channel. Means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation).
- (g) Construct or Construction. Means work performed by the Franchisee, its agents, representatives, employees, contractors, and/or subcontractors to construct, reconstruct, install, reinstall, extend, align, realign, locate, relocate, underground, adjust, affix, attach, modify, improve, and/or remove all or any part of the Cable System.
- (h) [Reserved]
- (i) Day. Calendar day.
- (j) Effective Date. The date this Franchise Agreement shall become effective, which shall occur when: (i) Franchisee and county have

signed this Franchise Agreement; (ii) Franchisee has made all payments, posted all securities and supplied all information that it is required to supply prior to or upon the Effective Date of this Franchise.

- (k) Franchise. The franchise granted to the Franchisee in this Franchise Agreement.
- (l) Franchise Agreement. This contract and any amendments, exhibits or appendices hereto.
- (m) Franchise Area. Franchisee's service territory as described in Appendix A, Description of Franchisee's Cable Facilities.
- (n) Franchisee. WAVEDIVISION I, LLC, a Washington limited liability company d/b/a Wave Broadband, and its lawful and permitted successors and assigns.
- (o) Gross Revenues. The annual gross revenue of the Franchisee or its Affiliates from all sources derived from the operation of the Cable System to provide Cable Services in the Franchise Area, calculated in accordance with Generally Accepted Accounting Principles (GAAP), or any replacement standard that may be adopted by the Financial Accounting Standards Board (FASB), applicable to Franchisee's treatment of revenues and expenses. Notwithstanding the foregoing, the County reserves the right to challenge Franchisee's calculation of Gross Revenues, including the use or interpretation of GAAP as promulgated and defined by

the FASB. Gross Revenues shall not include any bad debt, refundable deposits, sales tax, excise tax, or other taxes or fees collected for direct pass-through to local, State or federal government. Notwithstanding, any portion of Franchise fees and the capital grant in Section 16 which Franchisee passes through to Subscribers as external costs, as that term is defined by the FCC at 47 C.F.R. 76.922 (d)(3), as amended, shall not be included in the term Gross Revenues.

- (p) Institutional Network or I-Net. The communication network described in Section 15 of this Agreement.
- (q) K.C.C. The King County Code.
- (r) Maintenance or Maintain. Means to examine, test, inspect, repair, maintain, relocate, and/or replace the existing Cable System or any part thereof as necessary for safe and normal operations and related activities, as performed by the Franchisee, its agent, representatives, employees, contractors and/or subcontractors, unless otherwise provided herein.
- (s) PEG Channels. Channels designated for public, educational, or governmental use.
- (t) Person(s). Any individual, sole proprietorship, partnership, joint venture, association, corporation or limited liability company or limited liability partnership, or any other form of legal entity and any

lawful trustee, successor, assignee, transferee or personal representative thereof.

- (u) Rights-of-Way. The surface of and the space along, above and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement and road right-of-way now or hereafter held or administered by the County. It does not include recreational or nature trails, except where the trails intersect or are within roads, streets, avenues, alleys or highways.
- (v) State. The state of Washington.
- (w) Subscriber(s). A Person who lawfully receives Cable Services over the Cable System.
- (x) Subscriber Network. Refers to that portion of the Cable System used to provide Cable Services to Subscribers.

2. Grant of Authority; Term; Limits and Reservations.

- (a) Grant of Authority and Term. The Franchisee is hereby granted, subject to the terms and conditions of this Franchise Agreement and local, State and federal law, the right, privilege, and authority to Construct, Maintain and operate a Cable System within the Franchise Area to provide Cable Services, and to provide a related Institutional Network for public, educational or governmental use (including, but not limited to, County governmental use). This Franchise shall remain in effect for a period of ten (10) years from

the Effective Date of this grant to July 31, 2023 unless otherwise terminated or extended by action of the County.

(b) Scope of Franchise.

(1) This Franchise is intended to convey to Franchisee limited rights and interests only as to those County streets, alleys, roads and compatible utility easement Rights-of-Way in which the County has an actual interest. It is not a warranty or title or interest in any Rights-of-Way; it does not provide the Franchisee any interest in any particular location within the Rights-of-Way; and it does not confer rights other than as expressly provided herein. This Franchise does not deprive the County of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the County's Rights-of-Way covered by this Franchise, including without limitation the right to perform work on its roadways, Rights-of-Way or appurtenant drainage facilities, including constructing, altering, renewing, paving, widening, grading, blasting or excavating.

(2) Whenever any of the County Rights-of-Way as designated in this Franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city by annexation, shall fall within town or city limits, this

Franchise Agreement shall continue in full force and effect within the incorporated or annexed area, and may continue to be fully enforced by the County until such time as the incorporation or annexation is complete according to applicable State law. The completion of the incorporation or annexation shall not affect the County's interest in any I-Net or PEG facilities or equipment which may be located in the incorporated or annexed area.

(3) Nothing in this Franchise Agreement shall obligate the Franchisee to operate as a common carrier, and no application of Franchisee's facilities as utilized by the County will place the Franchisee within the regulation of a public utility by reason of such use.

(c) Exercise of Authority under Franchise. This Franchise Agreement only authorizes Franchisee to engage in Cable Services in accordance with the Federal Cable Act, 47 U.S.C. Sec. 521, *et seq.*, as amended ("Cable Act").

(d) Activities of Affiliates. Franchisee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Franchisee directly involved in offering Cable Services in the Franchise Area, or directly involved in managing or operating the Cable System in the Franchise Area will comply with the terms and conditions of this Franchise Agreement.

- (e) Nonexclusive Franchise. This Franchise is nonexclusive. Without limitation, the issuance of this Franchise shall not preclude the County from granting other or further franchises or permits; or preclude the County from using any Rights-of-Way or other public properties or easements of any sort; or affect its jurisdiction over them or any part of them; or limit the full power of the County to make such changes, as the County shall deem necessary, including without limitation the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other public properties and easements.
- (f) Competitive Equity. The County reserves the right to grant one (1) or more additional franchises or similar lawful authorizations to provide Cable Services ("additional franchises"). If the County grants an additional franchise requiring Gross Revenue payments and support obligations for PEG and other material terms and conditions that, overall, are more favorable than those required under this Franchise, then, at the Franchisee's request, this Franchise will be modified to provide similar terms and conditions on a per-Subscriber or Gross Revenue basis for that portion of the Franchise Area where the overlap occurs. In considering whether the additional franchise provides more favorable overall Gross Revenue payments and support obligations for PEG, all support provided for PEG and all fees required to be paid under the

additional franchise shall be considered. No modification is required if terms are substantially the same in value on a per-Subscriber or Gross Revenues basis.

- (1) The County is not required to make a modification to this Franchise, and this Section 2(f) shall not apply to an additional franchise:
 - (i) serving a franchise area outside of Franchisee's Franchise Area;
 - (ii) granted to a Person that is not subject to the same regulatory requirements as Franchisee, unless the County has clear authority to impose equivalent Gross Revenues payments and support obligations for PEG and other material terms and conditions; or
 - (iii) where the difference in treatment is required by federal law governing the issuance of additional franchises.
- (2) Franchisee's rights under this Section 2(f) are prospective. Franchisee shall have no right to recoup monies already paid by Franchisee under this Franchise prior to any modification.
- (3) The County shall notify Franchisee of all applications for additional franchises that propose to serve the Franchise Area in whole or in part.

- (g) Relation to Cable Ordinance. The provisions of the Cable Ordinance, as may be amended by the County in the exercise of its police power, shall apply to this Franchise Agreement as if fully set forth in this Franchise Agreement, and the express terms of the Cable Ordinance will prevail over conflicting or inconsistent provisions in this Franchise Agreement unless this Franchise Agreement expresses an explicit intent to waive a requirement of the Cable Ordinance. The express provisions of this Franchise Agreement constitute a valid and enforceable contract between the parties. Neither party may take any unilateral action which materially changes the explicit performance promised in this Franchise Agreement.
- (h) Relation to Other Provisions of Law. This Franchise Agreement and all rights and privileges granted under this Franchise are subject to the County's police powers and applicable federal, State and local law. This Franchise and the franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.
- (i) Relation to Prior Franchise. As of the Effective Date of this Franchise, the franchise previously held by the Franchisee is superseded and of no further force and effect (except for Franchisee's obligation to pay the County any final quarterly franchise fee, which is paid in arrears). As of the Effective Date of

this Franchise Agreement, the Franchisee will be in compliance with its financial obligations of the prior franchise agreement.

Franchisee hereby indemnifies the County against Franchisee acts and omissions which occurred when the prior franchise was effective to the extent any claims related to such acts and omissions are not barred by the statute of limitations.

- (j) Effect of Grant. By granting this Franchise, the County acknowledges and agrees that it has the authority to issue this Franchise and did so pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.
- (k) Effect of Acceptance. By accepting this Franchise, the Franchisee:
 - (1) acknowledges and accepts the County's legal right to issue and enforce this Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise Agreement; and (3) agrees that this Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.
- (l) Franchisee Bears Its Own Costs. Unless otherwise expressly provided in this Franchise Agreement, all acts the Franchisee is required to perform must be performed at the Franchisee's own expense.

- (m) No Waiver. The failure of the County or the Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a breach is not a waiver of any other breach, whether similar or different from that waived.
- (n) Suits for Damages Prohibited. The Franchisee shall be limited to injunctive or declaratory relief against the County or its elected officials, boards, commissions, agents or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of this Franchise Agreement or the Cable Ordinance because of the enforcement of this Franchise Agreement or the Cable Ordinance, except if such loss, costs, expenses, or damages are the result of the sole negligence or willful misconduct on the part of the County or its agents. The rights of the County under this provision are in addition to, and shall not be read to limit, any immunities the County may enjoy or rights which the Franchisee may enjoy under federal or State law.
- (o) External Costs. The Franchisee may itemize any external costs on Subscriber bills to the extent not prohibited by federal law. Notices

of price changes caused by external costs shall be in accordance with the Cable Act.

3. Severability; Effect of Changes in Law.

- (a) Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares that any provision of this Franchise Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise Agreement, and such holding shall not affect the validity or enforceability of all other provisions hereof.
- (b) Effect of Change in Law. In the event that State or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such State or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

4. Transfers.

- (a) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation to any Person ("Transfer"); nor shall there shall be a change in, transfer of, or acquisition of control of Franchisee by any other Person ("Change in Control"); nor shall title to the Cable System and this Franchisee, either legal or equitable, or any right, interest or property therein pass to or vest in any Person without the prior written consent of the County, which shall not be unreasonably withheld, delayed or conditioned.
- (b) The word "Control" as used in this section is not limited to majority stock ownership but includes actual working control in whatever manner exercised.
- (c) Franchisee shall promptly notify the County of any actual or proposed Transfer or Change in Control. Every Transfer or Change in Control, except as noted in Section 4(i), shall make this Franchise subject to cancellation unless and until the County shall have consented thereto, by ordinance, except as otherwise provided under the Cable Ordinance or federal law or regulation.
- (d) Applications for Transfer or Change in Control shall be considered in accordance with applicable federal laws and regulations governing cable system transfer applications. The parties to the Transfer or Change in Control shall make a written request to the

County for its approval of the Transfer or Change in Control and shall furnish all information required by law to be submitted to the County with the application.

- (e) In seeking the County's consent to any Transfer or Change in Control, the proposed transferee or controlling party shall include in its application a statement that it will comply with this Franchise Agreement, the Cable Ordinance and applicable law, and indicate whether, as applicable, it:
- (1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law, or is currently under an indictment, investigation or complaint charging such acts;
 - (2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;
 - (3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System;
 - (4) Is financially solvent, by submitting financial data, including financial information as required by FCC Form 394; and
 - (5) Has the legal, financial and technical capability to enable it to maintain and operate the Cable System for the remaining term of this Franchise.

- (f) In reviewing a request related to a Transfer or Change in Control, the County may inquire into matters including but not limited to the following (it being understood the scope of such inquiry shall be consistent with federal laws and regulations):
- (1) The ability of the prospective controlling Person or transferee to perform.
 - (2) The legal, technical and financial qualification of the prospective controlling Person or transferee, including but not limited to the controlling party or transferee's agreement to assume responsibility for and cure any violations or defaults under this Franchise.
 - (3) The effect of the Transfer or Change of Control on Subscribers and on the County.
 - (4) Whether the Franchisee is in compliance with its obligations under this Franchise and applicable law.
- (g) Franchisee, prospective transferee and prospective controlling Person shall promptly respond to all reasonable requests of information so that the County may complete its review within the time period specified in this Section 4(g). Failure to do so shall be deemed a tolling of the application. The County shall act by ordinance on the request within one hundred twenty (120) Days of the request, provided it has received all material information required by law. Subject to the foregoing, if the County fails to

render a final decision on the request within one hundred twenty (120) Days, such request shall be deemed granted unless the requesting party and the County agree to an extension of time. Any determination by the County with respect to a Transfer or Change of Control shall be made solely in accordance with applicable law.

- (h) Within sixty (60) Days of closing of any Transfer or Change in Control, if approved or deemed granted by the County, Franchisee shall file with the County a copy of the deed(s), agreement(s), lease(s) or other written instrument(s) evidencing such Transfer or Change in Control, certified and sworn to as correct by Franchisee and the transferee or new controlling Person. In the case of a Transfer or Change in Control, the transferee or the new controlling Person shall upon request by the County file its written acceptance agreeing to be bound by all of the provisions of this Franchise, the Cable Ordinance, and applicable law.
- (i) The prior approval of the County shall not be required for any:
 - (1) Transfer of ownership or other interest in this Franchise or Cable System or any Change in Control of the Franchisee in connection with an internal reorganization or internal merger to a direct or indirect parent, subsidiary or Affiliate under common control with the Franchisee where there is no direct or indirect change in the control of the ultimate parent, so

long as (in each case as reasonably determined by the County):

- (i) the County is notified of the proposed transfer no later than thirty (30) Days prior to the transfer of ownership or other interest;
 - (ii) the transferee or any resulting controlling Person shall insure that insurance coverage and all other commitments under this Franchise Agreement continue in force and without interruption and provide evidence to the same of the County no later than thirty (30) Days prior to the proposed transfer; and
 - (iii) there is no increased risk of liability to the County or nonperformance of the terms of this Franchise.
- (2) Mortgage or similar hypothecation for the purpose of financing without the consent of the County; provided that such pledge of assets shall not impair or mitigate Franchisee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise and do not result in a Transfer of the Franchise or Cable System or a Change in Control.
- (j) The consent or approval of the County to any Transfer or Change in Control shall not constitute a waiver or release of any rights of the County.

5. Franchise Fee.

- (a) Payment to County. As compensation for use of Rights-of-Way for the offering of Cable Services, the Franchisee shall pay the County a franchise fee in an amount equal to five percent (5%) of Gross Revenues.
- (b) Not in Lieu of Any Other Assessments, Tax or Fee. The franchise fee is in addition to all other fees, assessments, taxes or payments that this Franchisee may be required to pay under any federal, State, or local law, subject to any limitations set forth in 47 U.S.C. § 542.
- (c) Payments. Franchise fees shall be paid quarterly in arrears. In the event that a franchise fee payment or other sum due is not received by the County on or before the date due, or is underpaid, the Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the maximum rate permitted under Washington State law, compounded daily.
- (d) No Accord or Satisfaction. No acceptance of any payment by the County shall be construed as a release or an accord and satisfaction of any claim the County may have for further or additional sums payable as a franchise fee under the Cable Ordinance or for the performance of any other obligation of the Franchisee. The Franchisee shall be released of further responsibility for any unclaimed past or undue franchise fees for a

particular calendar year following the agreed resolution of a County financial audit or financial review of Franchisee's books and records related to payments for that year or years.

- (e) Payment on Termination. If this Franchise terminates for any reason, the Franchisee shall file with the County within one-hundred eighty (180) Days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. The County reserves the right to satisfy any remaining financial obligations of the Franchisee to the County by utilizing the funds available in a letter of credit, and/or other security provided by the Franchisee.

6. Notices.

All notices to Franchisee shall be mailed to:

401 Kirkland Park Place
Suite 500
Kirkland, WA 98033
Attention: Steve Weed, CEO and Jim Penney, EVP

until Franchisee changes that address by making an appropriate filing with the County, as contemplated by K.C.C. §6.27A.070. A notice may be mailed to Franchisee by depositing it in the U.S. Mail, first-class postage prepaid, or by providing the notice to Franchisee by overnight delivery service. The Franchisee shall provide current contact information by providing written notice to the King County Office of Cable Communications ("Cable Office") at CableOffice@kingcounty.gov.

Notwithstanding, notice may be delivered to Franchisee by electronic mail in non-breach situations.

7. Insurance Requirements.

- (a) Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise term, the following insurance against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of this Franchise by the Franchisee, its authorized agents, representatives, contractors, subcontractors and employees.
- (b) Scope of Insurance. Franchisee must keep insurance in effect in accordance with the minimum insurance scope the County Risk Manager reasonably may set from time to time after consulting with the Cable Office. The initial minimum insurance coverage shall be at least as broad as:
 - (1) Insurance Services Office form number CG-00-01 (Ed. 11-88) covering Commercial General Liability insurance in the amount of two million dollars (\$2,000,000) combined single limit per occurrence and in the aggregate for property damage and bodily injury. Such insurance shall cover all work related to the Construction, operation and Maintenance of the Cable System, and the conduct of Franchisee's Cable Services business in the Franchise Area.

- (2) Insurance Services Office form number CA-00-01 (Ed. 12-90), covering automobile liability symbol (1), "any auto" in the amount of two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage coverage;
 - (3) Workers' Compensation Insurance that meets all applicable federal, State and local laws; and
 - (4) Employers' Liability Insurance in the following amounts: one million dollars (\$1,000,000) policy limit.
- (c) Franchisee shall provide to the County certificates of insurance and endorsements designating the County and its officers, boards, commissions, councils, elected officials, authorized agents and employees as additional insured, except in the case of Workers' Compensation and Employer's Liability Insurance, and demonstrating that the Franchisee has obtained the insurance required in this section.
- (d) Insurance Review.
- (1) In consideration of the duration of this Franchise, the parties agree that the Insurance Requirements section herein, at the reasonable discretion of the County Risk Manager, may be reviewed and adjusted as provided in subsection (b), subject to Sections 7(d)(2)-(d)(3).

- (2) Any adjustments made as determined by the County Risk Manager shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first Day of year six (6) of the term of this Franchise.
 - (3) Adjustment, if any, in insurance premium(s) shall be the responsibility of the Franchisee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.
- (e) If Franchisee has a self-insured retention or deductible insurance program, such retention or deductible shall be subject to County approval, not to be unreasonably withheld, delayed or conditioned, shall not create an obligation or liability for the County, and shall be consistent with standard industry practices. Any deductible and/or self-insured retention of the policies shall not in any way limit or apply to the Franchisee's liability to the County and shall be the sole responsibility of the Franchisee.
- (f) Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Franchise Agreement.
- (g) Endorsements.

- (1) General liability and automobile liability policies shall contain, or shall be endorsed, so that:
 - (i) King County, its officers, officials, employees, and agents are to be covered as and have the rights of additional insured with respect to liability arising out of activities performed by or on behalf of Franchisee under this Franchise Agreement or applicable law, or in the Construction, Maintenance, operation, repair, or ownership of its Cable System.
 - (ii) To the extent of Franchisee's negligence, the Franchisee's insurance coverage shall be primary insurance with respect to the County, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute with it.
 - (iii) Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (2) Franchisee shall provide King County's Office of Cable Communications and Office of Risk Management with thirty

(30) Days' prior written notice, return receipt requested, should any policy required by this Franchise be suspended, voided, canceled, reduced in coverage or limits, or should Franchisee be notified by the insurance company of its intent not to renew such policy.

- (h) Each of the required insurance policies shall be placed with insurers with an A-VIII or better rating by Best's Key Rating Guide.
- (i) Verification of Coverage. The Franchisee shall furnish the County with certificates of insurance required by this Franchise Agreement and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be standard ACORD forms or such forms as are consistent with standard industry practices and are to be received and approved by the County prior to the commencement of activities associated with this Franchise. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise Agreement.

8. Condition of Franchise Area.

- (a) Franchisee accepts the Franchise Area in an "as-is with all faults" basis with any and all patent and latent defects in effect as of the Effective Date of this Franchise Agreement, and is not relying on

and shall not rely upon any representation or warranties, express or implied, of any kind whatsoever from King County as to any matters concerning the Franchise Area whether made prior to the Effective Date or afterwards, including, but not limited to: the physical condition of the Franchise Area; zoning status; presence and location of existing utilities; operating history; compliance by the Franchise Area with environmental laws or other laws and other requirements applicable to the Franchise Area; the presence of any hazardous substances or wetlands, asbestos, or other environmental conditions in, on, under, or in proximity to the Franchise Area; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Franchise Area; the condition of title to the Franchise Area, and the leases, easements, franchises, orders, licensees, or other agreements, affecting the Franchise Area.

- (b) King County hereby disclaims any representation or warranty, whether expressed or implied, as to the design or condition of the Franchise Area, its merchantability or fitness for any particular purpose, the quality of the material or workmanship of Rights-of-Way, or the conformity of any part of the Rights-of-Way to its intended uses. King County shall not be responsible to Franchisee or any of Franchisee's contractors for any damages to any of them

relating to the design, condition, quality, safety, merchantability or fitness for any particular purpose of any part of the Rights-of-Way present on or constituting any Franchise Area, or the conformity of any such property to its intended uses.

9. Indemnification.

- (a) To the extent permitted by law, and except for matters arising out of the County's sole negligence, Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, and its officers, boards, commissions, agents, and employees, against any and all claims, including but not limited to third-party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the Construction, Maintenance or operation of its Cable System, or in any way arising out of the Franchisee's enjoyment or exercise of its Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Franchise Agreement or the Cable Ordinance. Without limiting in any way the Franchisee's obligation to indemnify the County and its officers, boards, commissions, agents, and employees as set forth above, this indemnity provision applies to, but is not limited to, expenses for reasonable legal fees, except for County in-house legal fees not relating to litigation and disbursements incurred by the County and liabilities as follows:

- (1) To persons or property, in any way arising out of or through the acts or omissions of the Franchisee, its officers, employees, or agents, or to which the Franchisee's negligence shall in any way contribute;
 - (2) Arising out of any claim or invasions of the right of privacy, for defamation of any person, firm or corporation, for the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or a failure by the Franchisee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System, or for violation of any other right of any person, excluding claims arising out of or relating to programming provided by the County; and
 - (3) Arising out of Franchisee's failure to comply with the provisions of any federal, State or local statute, ordinance, rule or regulation applicable to the Franchisee with respect to any aspect of its business to which the Cable Ordinance and/or this Franchise Agreement apply.
- (b) Duty to Give Notice and Tender Defense. The County shall give the Franchisee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this section. In the event any such claim arises, the County or any other indemnified party shall tender the defense

thereof to the Franchisee and the Franchisee shall have the right and duty to either defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

- (c) Additional Indemnifications. The County may require Franchisee to execute specific and additional indemnifications in connection with issuing any permits related to performance under this Agreement.

10. Letter of Credit and Performance Bond.

- (a) Letter of Credit.

- (1) Amount. Prior to the Effective Date, Franchisee shall provide to the County a letter of credit as security for the faithful performance by the Franchisee of this Franchise Agreement, the Cable Ordinance and applicable federal, State, and local laws. The letter of credit shall be in the amount of twenty-five thousand dollars (\$25,000) and meet the following requirements:

- (i) Be issued by a bank licensed to do and doing business in the State and acceptable to the County;
- (ii) Be irrevocable and in a form reasonably acceptable to the County;
- (iii) Provide for automatic renewal of the letter unless the bank has given the Cable Office written notice by certified mail at least thirty (30) Days prior to expiration of the letter;

- (iv) Provide that the County may draw against the letter for any reason and at any time;
 - (v) Provide that, after termination of this Franchise, the County may draw against the letter and hold the funds in escrow:
 - (a) If the County has filed an action;
 - (b) If the County has issued a written notice and order or sought to draw against the letter prior to termination and Franchisee has contested the action or appealed the notice and order.
- (2) Use. The County may draw on the letter of credit to ensure the Franchisee's faithful performance of and compliance with this Franchise Agreement, applicable law, and all orders and permits of the County. This may include, without limitation, if Franchisee fails to pay the County any fees or taxes due, liquidated damages, damages, costs or expenses incurred by the County by reason of any act or default of the Franchisee, or if Franchisee fails to comply with any provisions of this Franchise Agreement, applicable law or with any order or permit of the County, which failure the County determines can be remedied by an expenditure from the letter of credit. The County shall notify the Franchisee of the amount and date of the withdrawal. The County shall

comply with Section 6.27A.230 of the Cable Ordinance.

Franchisee's recourse, in the event Franchisee believes any taking of funds is improper, shall be through legal action after the security has been drawn upon. If County's action or taking is found to be improper by any court or agency of competent jurisdiction, Franchisee shall be entitled to a refund of the funds plus interest and/or any other specific performance which such court or agency shall order.

- (3) Restoration of Funds. Within thirty (30) Days after the County gives Franchisee written notice that an amount has been withdrawn from the letter of credit, the Franchisee must deposit a sum of money sufficient to restore the letter of credit to the original amount.
- (4) Effect of Assessment for Liquidated Damages. If the County draws on the letter of credit in an amount exceeding five thousand dollars (\$5,000) for violations relating to the Liquidated Damages provision of this Agreement and Franchisee believes that such assessment is improper, County and Franchisee may mutually agree that the assessment shall be subject to mediation before pursuing any legal remedies otherwise available.
- (5) Return of Funds. If this Franchise terminates for any reason, or the Franchisee has ceased to provide service in the

County, the letter of credit may be terminated upon the earlier of (x) the date of any written confirmation by the County that the Franchisee does not owe funds to the County, and (y) the date that is one (1) year after such termination of the Franchise provided that County does not at such time have any claim pending against the letter of credit.

- (b) Franchise Performance Bond. Prior to the Effective Date of this Franchise, Franchisee shall also post a performance bond in the form attached as Appendix C in the amount of twenty-five thousand dollars (\$25,000) to ensure performance under this Franchise Agreement. The bond shall be executed by a duly licensed surety registered with the Washington State Insurance Commissioner, and the surety shall appear in the current Authorized Insurance Company list in the State published by the Office of the Insurance Commissioner. The surety shall designate an attorney-in-fact in the State. The County may require the surety to appear and qualify upon any bond. All duties and obligations of the principal as set forth in the performance bond are hereby incorporated as duties of the Franchisee under this Franchise Agreement as though fully set forth herein. This bond is not in lieu of bonds that may be required in connection with the issuance of Right-of-Way permits by the County.

11. Liquidated Damages.

(a) Amounts. Because the Franchisee's failure to comply with provisions of this Franchise Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Franchisee agree that liquidated damages may be assessed against the Franchisee for the violations specified below. These damages represent both parties' best estimate of the damages resulting from the specified injury.

- (1) For failure to extend a service line as required: \$1.50/Day for each affected potential Subscriber requesting service for each Day the violation continues;
- (2) For failure to provide any capability for PEG use of the Cable System required in this Franchise: \$15 for each violation for each Day the violation continues;
- (3) For failure to maintain a local office as required in Section 15(j) below: \$700 per month;
- (4) For deliberate failure to supply information, reports, or filings required by the County pursuant to this Agreement or applicable law: \$70/Day for each violation for each Day the violation continues;
- (5) For violation of each federal quarterly customer service standards: \$700 for the first violation; \$1,400 for any

violation within twelve (12) months after the first violation;
and \$2,800 for any violation within twelve (12) months after
the second or any subsequent violation; and

- (6) For all other material violations of this Franchise Agreement, including County customer service standards, for which actual damages may not be ascertainable: \$75/Day for each violation for each Day the violation continues. For violations of customer service standards under Section 11 (a)(1) or (a)(6) the County hereby elects to have those damages credited to the affected Subscribers, and Franchisee agrees to do so.
- (b) Each violation of the provisions enumerated in Section 11(a) shall be considered a separate violation for which separate liquidated damages can be imposed. Subject to the procedures in Section 11(c), any liquidated damages for any given violation may be imposed upon Franchisee by the County for a maximum of one hundred eighty (180) Days after the Franchisee receives notification of the violation, and may be recovered by the County by drawing upon any security; provided however, in no event shall Franchisee's aggregate liability for any liquidated damages exceed one hundred thousand dollars (\$100,000) in any calendar year. If after that amount of time Franchisee has not cured, or commenced to cure, the alleged breach to the satisfaction of the County, the

County may pursue all other remedies. Additional liquidated damages may be assessed for a specific breach if a court or agency of competent jurisdiction determines that the Franchisee was in breach of a specific obligation for a period longer than any period for which liquidated damages have been already recovered for the same breach. The foregoing procedures apply to instances where the County chooses to assess liquidated damages prior to seeking damages from a court or agency of competent jurisdiction, but does not limit the County's right to commence an action with a court or agency of competent jurisdiction at any time.

(c) Date of Violation, Notice and Opportunity to Cure.

- (1) Prior to assessing any liquidated damages, the County shall notify Franchisee in writing stating with reasonable particularity the provision or provisions the County believes Franchisee may have been in default and the details of any alleged default relating thereto.
- (2) Franchisee shall have forty-five (45) Days from the date of written notice: (1) to respond to the County, contesting the assertion of noncompliance or default; or (2) to cure such default; or (3) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) Day period, initiate reasonable steps to remedy such default and notify

the County of the steps being taken and the projected date that the cure will be completed.

- (3) If the County, in its sole reasonable discretion, determines that the response, the cure, or the proposed cure is adequate, it shall not assess liquidated damages. Otherwise, the County may assess liquidated damages at any time after the forty-five (45) Day period has passed, retroactive to the date of violation, or such other later date as the County specifies, but subject to the limits stated in Section 11(b).
 - (4) If Franchisee fails to comply with a cure plan in any material respect, the County may impose liquidated damages without further notice and opportunity to cure, and such damages shall not be subject to the limits in Section 11(b).
 - (5) The requirements of this Section 11(c) do not apply to liquidated damages assessed under Section 11(a)(5), nor do they apply in the case of repeated violations or willful violations. In such cases liquidated damages may be assessed at any time the County determines a violation subject to this Section 11 has occurred.
- (d) Effect on Duty to Comply. The collection of liquidated damages by the County shall in no respect affect:
- (1) Compensation owed to Subscribers; or

(2) The Franchisee's obligation to comply with the provisions of this Franchise Agreement or applicable law.

(e) Relationship of Remedies. Nothing in this Section 11 shall affect the County's rights in Section 20.

12. Non-Discrimination.

(a) Non-Discrimination Among Subscribers.

The Franchisee shall comply with all applicable local, State and federal laws and regulations prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination in the provision of Cable Services. Subject to such laws:

(1) The Franchisee is specifically prohibited from denying Cable Service or discriminating against any Subscriber, access programmer, or resident on the basis of age, ancestry, creed, color, marital status, national origin, race, religious affiliation, sex, sexual orientation, gender identification, or disability or taking any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, State, or local law, nor may the Franchisee require a Person to waive such rights as a condition of taking Cable Services.

(2) The Franchisee is specifically prohibited in the provision of Cable Services from denying access or levying different rates and charges for Cable Services on any group of

potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

- (3) To the extent the County may enforce such a requirement, the Franchisee is specifically prohibited in the provision of Cable Services from discriminating in its rates or charges for Cable Services or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers. The Franchisee may, however, offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Franchise Area; and the Franchisee may offer special discounted rates for the basic and other regulated service tiers to economically disadvantaged Subscribers who receive federal SSI assistance, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.
- (4) The Franchisee may request in writing, and the County may grant, temporary authority to the Franchisee for periods not to exceed twenty-four (24) months to offer specifically identified services, packages and combinations of services

to selected groups of Subscribers at terms and conditions not generally available to all Subscribers. The County may refuse to grant this waiver unless it is persuaded upon sufficient showing by the Franchisee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all Subscribers in a uniform, consistent and nondiscriminatory manner.

(b) No Discrimination.

- (1) Franchisee shall fully comply with all applicable federal, State, and local laws and regulations which prohibit discrimination. These laws include, but are not limited to, Titles VI and VII of the Civil Rights Act of 1964, as amended, Chapter 49.60 of the Revised Code of Washington, as amended, and Chapters 12.16 and 12.18 of the King County Code, as amended.
- (2) During the performance of this Franchise Agreement, neither Franchisee nor any party subcontracting under the authority of this Franchise Agreement shall discriminate on the basis of age, ancestry, creed, color, marital status, national origin, race, religious affiliation, sex, sexual orientation, gender identification, or disability against any employee or applicant

for employment, unless based on a bona fide occupational qualification, or in the administration or delivery of services or any other benefit under this Franchise Agreement.

- (3) The Franchisee and any party subcontracting under the authority of this Franchise Agreement shall undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. The Franchisee's equal employment opportunity efforts shall include, but not be limited to, the following:

employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Franchisee agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this non-discrimination clause.

- (4) If Franchisee engages in unfair employment practices as defined in King County Code Chapter 12.18, as amended, the remedies set forth in that Chapter, as amended, shall apply.

13. Rates.

- (a) Rates and Charges for Regulated Services. The County may regulate the Franchisee's rates and charges to the extent allowed by applicable law.
- (b) Manner of Regulation. Without limiting the foregoing, and except as inconsistent with applicable law,
- (1) The County may require the Franchisee to submit to the County the rates in effect on the date this Franchise is issued.
 - (2) The Franchisee may not change a rate or charge that is subject to the County's regulation without the County's prior approval, except as federal law otherwise provides.
- (c) Rate Schedules. The Franchisee must provide a rate card to the Cable Office on the Effective Date of the Franchise Agreement, and at least annually thereafter, or, if more frequently, whenever its published rates change. The Franchisee must update the rate card so that the schedule of rates and charges is current. In accordance with federal law, the Franchisee must give a minimum of thirty (30) Days prior notice before changing any rate or charge. Franchisee may satisfy its obligation to provide a rate card by posting its rates on a website generally available via the Internet. Notice to the County of any changes to the schedule of rates and charges shall remain as required in this subsection.

- (d) Experimental Cable Services. Subject to section 12(a), the Franchisee may conduct testing of experimental Cable Services to particular regions of the County without making the service generally available throughout the County.

14. Customer Service.

The Franchisee shall meet or exceed any customer service standards adopted by the Federal Communications Commission, and, to the extent the same are stricter or address different matters, customer service standards set forth in the Cable Ordinance. Nothing in this Franchise Agreement limits any rights the County or Franchisee may have under 47 U.S.C. § 552.

15. System Facilities, Equipment and Services.

- (a) System Upgrade. At all times, Franchisee shall maintain its cable system infrastructure to a minimum bandwidth of 750 MHz capacity. Active and passive devices shall be two-way, capable of passing a minimum of 750 MHz and delivering high-quality analog, digital and/or Internet protocol (IP) video signals meeting or exceeding FCC technical quality standards. Cable System nodes shall be designed for future segmentation as necessary to maximize shared bandwidth.
- (b) Other Cable System Characteristics. In addition:

- (1) The Cable System shall use equipment generally used in high-quality, reliable, redundant, modern systems of similar design.
- (2) Each hub shall have adequate ventilation and space reserved such that the hub meets or exceeds applicable design and technical requirements and reasonably accommodates equipment for the County. Upon 30 Days' written notice to Franchisee the County shall be allowed to use without charge space in the amount of one (1) rack and power in Franchisee's hub, located in Duvall, so long as Franchisee maintains the hub as a technical facility.
- (3) The Cable System shall meet the technical specifications for end-of-line performance as described in Appendix B for all areas served unless otherwise approved by the County.
- (4) All closed-caption programming retransmitted by the System shall include the closed-caption signal. Franchisee shall have TDD/TTY (or equivalent) equipment at the company office and a telephone number listed on subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact this Franchisee.

(c) Institutional Network.

(1) Franchisee shall maintain the existing fiber optic Institutional Network for the exclusive use of the County or its designated users to link the five (5) facilities listed below and shall be for public, educational or governmental (“PEG”) use, including but not limited to voice, video and data use:

- (i) King County Ring Hill EMS at 22905 Old Woodinville-Duvall Road, Woodinville, WA;
- (ii) East Ridge Elementary at 22150 NE 156th Place, Woodinville, WA;
- (iii) Duvall Library at 15619 NE Main Street, Duvall, WA;
- (iv) Stillwater Elementary at 11530 320th Avenue NE, Duvall, WA; and
- (v) Carnation Elementary at 4950 Tolt Avenue, Carnation, WA.

As of the Effective Date of this Franchise, the County acknowledges and confirms to the Franchisee that the existing fiber optic Institutional Network is fully functional and is sufficient to meet the County’s needs.

(2) By August 1, 2015, Franchisee shall design, Construct and Maintain for the exclusive use of the County or its designated users an expansion that links the five (5) additional facilities listed below to the fiber optic Institutional Network. The expansion shall link the facilities using the

architecture described in Appendix D. The Franchisee may propose and the County may accept an alternative architecture providing equivalent service to sites at a reduced cost to the Franchisee or providing improved service to sites without additional cost, including the cost of both construction and operation, to the County. Prior to commencing Construction of the designated facilities, Franchise shall provide the Cable Office a complete engineering design for the fiber plant and cabling required to access the user facilities. The Cable Office shall review, comment and suggest modifications of the design, if any, within fifteen (15) business days. The design shall be deemed acceptable to the Cable Office should it fail to respond within this period. The listed sites are:

- (i) Duvall Police Station, 26225 NE Stephens St, Duvall, WA.
- (ii) Duvall Fire Department at 15600 First Ave NE, Duvall, WA.
- (iii) Riverview School District Administration Office, 15510 1st Ave. NE, Duvall WA.
- (iv) Duvall City Hall, 15535 Main St. NE, Duvall, WA.

- (v) King County Carnation Treatment Plant, 4405 Larson Avenue, Carnation, WA (west of Stewart Ave. on W. Entwistle St., Carnation).
- (3) The Franchisee shall conduct tests and submit results from those tests to the County in writing demonstrating the compliance of the fiber optic links with specifications set forth in Appendix D when it installs, repairs, Maintains, or relocates Institutional Network fiber. No fiber Construction, repair, Maintenance, or relocation shall be deemed to be complete unless it is tested according to the procedure described in this section and meets the requirements of Appendix B. The County has the right to observe all tests on work undertaken for it and to conduct its own tests on that work. To facilitate this, the Franchisee shall give the County advanced notice in writing, by email, or by facsimile of the time and place for Franchisee's testing. Acceptance testing shall be conducted no sooner than seven (7) Days after the County has received notice of the testing unless the Franchisee and County agree to an earlier test date. When the Franchisee performs an emergency repair of the Institutional Network fiber, the Franchisee shall test it immediately after completion of the repair to determine whether the fiber, as repaired, meets the specifications and

shall send a copy of the test results to the County as soon as practicable.

- (4) Maintenance and Repairs. Franchisee shall Maintain and repair the Institutional Network at no cost to the County.
 - (i) Timing of Repairs. The Franchisee shall use commercially reasonable efforts to have qualified staff available twenty-four (24) hours a Day, seven (7) Days a week, every day of the year to repair the I-Net fiber. In the event any fiber installed as part of the I-Net is damaged or cut, or there is a service disruption or other condition which causes such fiber to not meet the required specifications, qualified repair staff engaged by the Franchisee shall commence work on site to restore the fiber and I-Net operations within(A) two (2) hours after the sooner of (x) the time the Franchisee becomes aware of the problem and (y) the time of Franchisee's receipt of notification by the County between the hours of 8 a.m. and 6 p.m. weekdays, and (B) within four (4) hours after the sooner of (x) the time the Franchisee becomes aware of the problem and (y) the time of Franchisee's receipt of notification by the County during any other period. Such restoration shall be done at a speed or diligence

that is at least as great as the Franchisee uses in restoring fibers for its own use. Within one hundred eighty (180) Days of the Effective Date of this Franchise, the Franchisee shall develop a Rapid Response Plan to implement this provision, and on written request of the County shall submit the Plan to the County for its review.

- (ii) I-Net Network Maintenance Program. Franchisee shall conduct a preventive maintenance program to ensure that all fiber in the I-Net is maintained in good condition and that it continues to meet all clearance and cable support requirements to guard against physical damage to the network. This program shall provide preventive maintenance to I-Net fibers that is at least as great as the Franchisee provides for the Subscriber Network. Subject to force majeure events, I-Net availability shall not fall below 99.9% in any year during the term of this Franchise. Within one hundred eighty (180) Days of the Effective Date of this Franchise Agreement, the Franchisee shall develop a Routine Maintenance Plan to implement this provision, and on written request shall submit the plan to the County for its review.

(iii) Notice of Interruptions. The Franchisee agrees not to take any preventive Maintenance that is likely to result in an interruption of service over the I-Net fibers without the prior consent of the County. Whenever the Franchisee plans to take any preventive Maintenance that will interrupt service over any of the I-Net fibers, it shall notify the King County INET network operations center at 206.263.7000 or at inet.operations@kingcounty.gov at least fourteen (14) Days prior to commencing such action. Such notice shall include the date, nature, and location of the proposed preventive Maintenance action, and the beginning and ending date and time proposed for the interruption. If the County objects to any part of the proposed action or interruption, it shall so notify the Franchisee in writing, by e-mail or by facsimile within fifteen (15) Days of receipt of the notice. No preventive Maintenance that will result in an interruption of service shall be taken until the Franchisee and County have first agreed to the date, nature, and location of the proposed action, and the beginning and ending date and time for the proposed interruption.

(iv) Cost of the I-Net. The additional sites added in Exhibit E, repair and Maintenance of the I-Net, and all of the Franchisee's costs arising therefrom, shall be provided at no cost to the County during the term of this Franchise Agreement. Any costs related to expansion of the I-Net beyond that which is described in Exhibit E shall be borne by the County at Franchisee's customary time and materials rate. The parties agree that the County shall be a perpetual lessee of the I-Net at no cost to the County.

(d) Cable Services to Certain Facilities. Upon the request of the County, the Franchisee shall provide basic, and expanded basic Cable Services, or their equivalent, including all required PEG Channels activated on the Cable System to the locations in the Franchise Area designated below. Franchisee shall provide equivalent service if Franchisee discontinues such tier of service in its current form. These services shall be free of charge to each of the following locations in the Franchise Area: each public school and public school administrative facility; each King County Library System facility; each fire station; each County office and agency whether located in a County-owned or County-leased facility. The Franchisee shall provide services to the above facilities located within the Franchise Area or in other jurisdictions located within

King County where the Franchisee has a franchise, permit, license or other right to serve to the extent designated by the County from time to time. To the extent any drop to facilities other than public schools and public libraries exceeds sixty (60) feet underground trench or one hundred twenty-five (125) feet aerial, Franchisee may request compensation for its time and materials for installations in excess of those distances. Inside wiring will not be Franchisee's responsibility. The obligation to provide service otherwise includes the obligation to provide and install such devices as may be required so that each television receiver within the location connected to internal wiring can view and individually tune signals being provided as part of the service. Each service outlet will have sufficient power to serve all rooms in each facility. Free service will not be provided to any private, for-profit concessionaire using County facilities.

16. Channels, Facilities, Equipment and Services for Public, Educational and Governmental Use.

- (a) General. Franchisee shall provide PEG Channels on its Cable System for public, educational and government ("PEG") use in accordance with Section 16(b).
- (b) Characteristics of PEG Channels. Each PEG Channel provided pursuant to subsection 16(c) shall be subject to the following.

- (1) Each PEG Channel shall be viewable by every Subscriber as part of that Subscriber's service, without any additional service charge.
- (2) It is the responsibility of the County's PEG access providers to provide Franchisee with an upstream PEG signal at the termination panel hand-off point that meets or exceeds FCC technical standards, and Franchisee shall deliver to Subscribers a downstream PEG signal that meets or exceeds FCC technical standards.
- (3) The entire upstream PEG signal delivered to Franchisee by a designated access provider will be passed through to Subscribers. By way of example, if a PEG provider places closed captioning on its upstream PEG signal, Franchisee shall deliver the PEG signal, including closed captioning, to its Subscribers.
- (4) Subject to applicable law, PEG Channels may be delivered in analog format or digital format provided that if Franchisee elects to provide PEG Channels in digital format while Franchisee delivers some channels to its Subscribers in analog format, Franchisee shall provide digital-to-analog converters for the primary television set at no additional cost to any Subscriber on request.

(5) Once assigned, PEG Channel locations cannot be changed without ninety (90) Days prior written notice to the County, except in circumstances beyond the Franchisee's reasonable control.

(c) Number of Channels, Format and Video on Demand

(1) On the Effective Date, the Franchisee shall make available within the Franchise area a minimum of ten (10) analog channels for PEG programming throughout the term of this Franchise, and simulcast those analog channels via ten (10) standard definition digital channels, all of which conform to the requirements of Section 16(b).

(2) PEG Channels in Digital-Only and High-Definition Format
At any time following the Effective Date, Franchisee may cease carriage of up to ten (10) PEG Channels in analog format provided that at such time that Franchisee carries any of the PEG Channels in a digital-only format Franchisee will provide digital-to-analog converters or other equivalent equipment, at no additional cost to Subscribers, for the primary television set of each such Subscriber who requests such equipment to enable such Subscriber with analog-only television equipment to view the PEG Channels carried in digital format.

- (3) Within ninety (90) Days following the commencement of carriage of any of the PEG Channels in digital-only format or upon ninety (90) Days prior written notice from the County to Franchisee, Franchisee will commence carriage of one (1) of the PEG Channels in high-definition format. County may designate which of the PEG Channels will be carried in high-definition format.
- (4) For the elimination of doubt, Franchisee will not be required under subsections (2) and (3) above to (i) transmit more than one (1) PEG Channel in high-definition format, (ii) provide any equipment to County to facilitate the creation, storage or distribution of any high-definition programming, or (iii) provide to Subscribers any equipment (other than the digital-to-analog converters described above) necessary to view the PEG Channel in high-definition format.
- (5) The County shall administer the use and allocate responsibility for the operation of all PEG Channels. The County shall have the right to allocate the individual additional PEG Channels to any entity responsible for managing PEG Channels, or to maintain them as separate channels under the County's own control.
- (6) Video On Demand. Within ninety (90) Days following the Effective Date of this Franchise, Franchisee will set aside

sufficient storage capacity on its video-on-demand (“VOD”) server to store up to thirty (30) hours of PEG Channel programming. County will have the obligation and shall bear all costs and expenses to format (i.e., encode the PEG Channel programming in the appropriate VOD format along with the appropriate metadata to enable its use in Franchisee’s VOD server) and transport the formatted PEG Channel programming to Franchisee’s VOD server via a transport mechanism that is commonly used in the cable television industry. At such time that County provides formatted PEG Channel programming, Franchisee will make such programming available to Subscribers that have access to Franchisee’s other VOD programming in a manner consistent with such other VOD programming and at no additional cost to such Subscribers. County will be responsible for “refreshing” the PEG Channel programming on a periodic basis.

- (d) Use of Capacity. The County agrees that it will use its designated PEG Channels and facilities, its Institutional Network and Franchisee Cable System facilities necessary for the delivery of PEG programming, if any, solely for non-commercial PEG communication purposes and not for any for-profit or commercial purposes by the County or third parties. However, the County may

authorize charges to pay the direct costs of the services, such as fees for video class instruction or charges to recover the cost of special use equipment. Franchisee shall have the right to audit the County's use of such facilities to ensure compliance with this Section 16(d).

- (e) Grant for Equipment and Facilities. In exchange for expanding, repairing and maintaining the I-Net at no cost to the County pursuant to Section 15(c), the Franchisee shall be deemed to have satisfied in full any and all obligations for capital grants, including PEG fees and annual capital grants for cable related and I-Net related purposes.
- (f) Return Feed from Facilities; Monitoring.
 - (1) The Cable System was designed and built, and is maintained with all terminal interface equipment and facilities needed to transport PEG signals for the PEG Channels identified in Section 16(c) from PEG access facilities designated by the County to Franchisee's head end for delivery to County subscribers.
 - (2) Each PEG access provider should be able to monitor its PEG channel.
- (g) Management of Channels. The County may designate one (1) or more designated access providers, including a non-profit access management corporation, to manage the use of all or part of the

Institutional Network and the PEG channels. Until such an entity has been designated, the County shall perform all functions assigned to the entity in this Agreement.

- (h) Program Guide. If the County or PEG access provider chooses to contract with Franchisee's program guide provider, PEG Channels shall be listed on the guide in the same manner as other commercial channels.
- (i) Costs and Payments Not Franchise Fees. The parties agree that any capital costs to the Franchisee associated with the provision of support for PEG access pursuant to this Franchise Agreement, and any capital contribution payments made to the County pursuant to this Section 16, do not constitute and are not part of a franchisee fee, and fall within one or more of the exceptions to 47 U.S.C. § 542(k).
- (j) Editorial Control. Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated PEG access Channels, nor shall the Franchisee be held liable in any way for the content delivered on the County's PEG Channels to Franchisee's Subscribers via its Cable System.
- (k) Interconnection.
 - (1) For the purpose of exchanging PEG Channels, Franchisee shall:

- (i) interconnect PEG Channels on its Cable System with all other cable systems that it or any Affiliate owns or controls within the County; and
 - (ii) interconnect PEG Channels on the Cable System with unaffiliated geographically contiguous cable systems within the County that request interconnection.
- (2) The interconnection terms under Section 16 (k)(1)(ii) shall be as mutually agreed between Franchisee and the party requesting interconnection or, if no agreement can be reached, the party requesting interconnection will bear the cost of bringing its system to the nearest node or logical interconnection point on Franchisee's system, and the initial and ongoing actual costs of maintaining the devices at the interconnection point necessary to allow signals to be exchanged. The County may relieve Franchisee of its obligation to interconnect if the County finds that requiring the interconnection would unfairly advantage the party requesting interconnection.
- (3) The Franchisee shall provide signals to and receive signals from all interconnected operators so as to provide real time carriage of PEG programming without interruption.
- (4) The County may use the I-Net to deliver PEG programming to or receive PEG programming from any provider of video

services. Franchisee is not required to interconnect with the portions of any unaffiliated cable systems that receive PEG signals via the I-Net.

- (5) Nothing in this Agreement is intended to excuse Franchisee's compliance with any interconnection obligations under State or federal law or regulations.

17. Timing, Planning of Construction, and Line Extensions.

- (a) Prior to entering onto private property to Construct, operate or repair its Cable System, Franchisee shall provide reasonably adequate notice to the resident or owner of the property that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

(b) Drop Distance and Line Extensions.

- (1) The Franchisee must provide Cable Services to all Persons within its franchise area that meet its standard credit qualifications, and shall extend its Cable System to do so in accordance with this Agreement.
- (2) Franchisee must make Cable Service available for the standard installation charge to all Persons within its Franchise Area who request Cable Service and agree to

subscribe for a minimum period of one(1) year if, using the most direct route, the distance the distribution line would be extended to provide service divided by the number of Persons requesting service is not more than three hundred (300) feet from the Cable System, and the drop distance is not more than one hundred fifty (150) feet from the Cable System.

- (3) Subject to Section 17(b)(2), the Franchisee must make Cable Services available to every residential dwelling unit within the Franchise Area where the minimum density is at least twenty-five (25) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per mile in areas served by underground facilities. The Franchisee may elect to provide Cable Services to areas not meeting the above density standard and charge the requesting resident(s) for the line extension on a time and material cost basis. The Franchisee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

(c) Joint Utility Trenches.

The Franchisee shall share joint or common utility trenches with electric, telephone or similar utilities, unless the cost of participating

in the joint trench exceeds the Franchisee's cost of constructing its own trench.

- (d) Construction of the Institutional Network. The parties will work in good faith to coordinate design and construction of additions to the Institutional Network beyond those described in section 15(c) with any upgrade of the Franchisee's network. Both parties will use best efforts to coordinate on the location of the Franchisee's fiber nodes to maximize the savings to the County while not altering the cost of Construction or specifications for the upgrade to Franchisee. Franchisee shall undertake Construction and installation of all County network facilities in accordance with section 15(c).

18. Conditions on Use of Rights-of-Way and King County Owned Property: Specific Practices.

- (a) All Work Performed in Accordance with Applicable Laws. The Construction, Maintenance, and operation of the Cable System, and all other work performed in Rights-of-Way must be performed in compliance with this Franchise Agreement and all applicable laws. By way of illustration and not limitation, the Franchisee must comply with the following: The then-current edition of the County Road Design and Construction Standards; King County Regulations for Accommodation of Utilities; Washington State Standard Specifications for Roads, Bridges and Municipal Construction; National Electric Code published by the National Fire

Protection Association (currently ANSI/NFPA 70-1990, and replaced by subsequently adopted additions); National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (currently ANSI C2-1990 and replaced by subsequently adopted additions); and Occupational Safety and Health Administration (OSHA) Safety and Health Standards. All traffic control shall be done in compliance with the then-current edition of Manual on Uniform Traffic Control Devices, Part VI.

19. Operation and Reporting Provisions.

(a) Books and Records and Facilities.

- (1) The County and its representatives shall have the right to inspect and to have copied any and all Books and Records in order to monitor compliance with the terms of the Cable Ordinance, this Agreement, or applicable law. The County may conduct its inspection and copying at any time during normal business hours upon reasonable written notice. Such authority shall include, but not be limited to, the right to audit Franchisee's Books and Records and to inspect and test Franchisee's technical facilities.
- (2) Franchisee and its Affiliates shall maintain for a period of six (6) years all Books and Records reasonably necessary to document its compliance with this Franchise Agreement, the Cable Ordinance, and all applicable laws and regulations,

including those respecting its equal employment opportunity plan in accordance with the FCC's EEO regulations. Books and Records shall be made available within the County (it being understood that Franchisee's office in Kirkland, Washington is located within the County). The County will agree to inspect and copy Books and Records at a location other than within the County, but only if the Franchisee agrees to pay all reasonable expenses of the County, its representatives or an outside firm performing the work under contract to the County associated with traveling to inspect, audit or copy the Books or Records, and it agrees it will not treat such payment as a Franchise fee or offset it against any amounts owed to the County.

- (3) If Franchisee considers all or any portion of any Book or Record the County requests to copy, whether in electronic or hard copy form, to be protected under law, the Franchisee shall clearly mark the Book or Record with words such as "PROPRIETARY", "CONFIDENTIAL" OR "BUSINESS SECRET". If a request is made for disclosure of such Book or Record under the Public Records Act ("the Act"), chapter 42.56 (RCW), the County will: (a) determine whether the Book or Record is subject to disclosure or exempt under the Act; (b) notify the Franchisee of the request and of the

County's determination; and (c) allow the Franchisee ten (10) business days to take whatever action it deems necessary to protect its interests. If Franchisee takes no action with this period or obtains no court order enjoining disclosure, the County will release the Books and Records deemed by the County to be subject to disclosure. The County shall not be liable to the Franchisee for inadvertently releasing Books and Records pursuant to a request under the Act not clearly identified by the Franchisee as "CONFIDENTIAL", "PROPRIETARY" OR "BUSINESS SECRET".

- (4) To the extent the Books and Records the County deems relevant are held by the Franchisee or its Affiliates, the Franchisee is responsible for collecting those Books and Records and producing them at the approved location.
- (5) After the County has carried out its responsibilities which involve any copied Records of the Franchisee, Franchisee may request the County's representatives or its outside firm performing the work under contract to the County to either destroy such copies or return them to Franchisee at the Franchisee's sole cost to the extent permitted by law.

- (b) Reports. The Franchisee shall provide the reports specified below, and such other reports as may be required.

- (1) On written request, bi-annual, statistically valid telephone survey, developed jointly by the parties of PEG viewership for unincorporated King County cable television Subscribers. The content of the survey can be expanded upon mutual agreement.
- (2) On written request, within four (4) months of the close of its fiscal year, the Franchisee shall provide the Cable Office with a copy of the following:
 - (i) A report detailing whether each applicable customer service standard as defined by FCC Rules, Cable Ordinance, and required by this Franchise were met. For each standard not met, the report will explain the cause and corrections taken for each.
 - (ii) An estimate of the number of disabled, elderly and low income Subscribers receiving any rate discounts, and the percentage of the monthly discount.
 - (iii) A statement of the resolution of complaints referred to it by the Cable Office. Notwithstanding any provision of the Cable Ordinance that could be read to require a more formal response, such statement shall be by telephone unless the Cable Office requests a written statement, and shall be given as soon as practicable.

- (iv) A report summarizing Cable System outages in the County Franchise Area. An outage includes any loss of one or more video or audio channels that affects the lesser of 10% of the Subscribers on a single fiber optic line or 50 or more Subscribers on the same distribution line simultaneously, but does not include instances where the sound or video is lost prior to its receipt by the Cable System.
- (3) Within one (1) month of the end of each quarter, which shall end on March 31, June 30, September 30, and December 31 of every year, the Franchisee shall provide the Cable Office with a statement, in a form specified by the County, showing the number of Subscribers served in the Franchise Area. In addition, the statement shall separately list revenues for each source of revenue which is included within the definition of Gross Revenues in this Franchise Agreement.
- (4) Upon written request, the Franchisee shall provide the Cable Office the following:
 - (i) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Way. The route map shall identify Cable System facilities as aerial or underground and any cabinets or other structures in the Rights-of-Way, but is not required to

depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Franchisee shall also provide, if requested, mapping information in a "Shape files" or other mutually agreeable electronic format that can be imported into the County's Geographic Information System ("GIS") to show the location of the aerial/underground facilities (including cabinets) in relation to a Right-of-Way centerline reference, so that the County may add this information to the County's GIS.

- (ii) As soon as practicable given the time of day, Franchisee shall provide the Cable Office with notice via e-mail, facsimile or telephone of any unanticipated or unplanned complete or partial loss of service affecting five hundred (500) or more Subscribers within the County's Franchise Area, and lasting longer than twenty-four (24) hours. Franchisee's notice shall include the date, time, cause, general location by street, and expected time of repair. As soon as possible after completion of the repair work, the Franchisee shall notify the Cable Office of the actual date and time of completion of the repair.

- (iii) Franchisee shall provide the Cable Office within a 24-hour period advance notice of any planned outages affecting 500 or more Subscribers on the same distribution line or fiber node within the County's Franchise Area.
- (5) EEOC. On written request, Franchisee shall provide King County a copy of its equal employment opportunity plan filed with or submitted to the FCC, any changes to the employment opportunity plan made in the last year, and a copy of its most recent FCC Form 396C. If the FCC replaces Form 396C, the Franchisee shall file the succeeding forms which contain any of the information previously required in Form 396C.
- (c) Retention of Records; Relation to Privacy Rights. The Franchisee shall take all steps required, if any, to ensure that it is able to provide the County all information which must be provided or may be requested under the Cable Ordinance or this Franchise Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this section 19 shall be read to require the Franchisee to violate 47 U.S.C. § 551. The Franchisee shall be responsible for blacking out any data that federal law prevents it from providing to the County.

- (d) Charges for Inspection, Audits or Tests. In addition to any expenses the Franchisee must bear under section 19(c):
- (1) if an inspection or test determines that Franchisee has not materially complied with applicable FCC technical standards, the Franchisee shall reimburse the County for all reasonable costs including expert fees arising from the inspection or test.
 - (2) if an audit determines that Franchisee has underpaid amounts due the County by more than five percent (5%) of the amount owing, the Franchisee shall pay all reasonable costs of the audit. These charges are incidental to the enforcement of this Franchise; they do not limit any right the County may have to exercise any other remedy. To the extent this Section 19(d) conflicts with the County Cable Ordinance, this section will prevail.

20. Remedies.

- (a) Remedies Are Nonexclusive. Subject to applicable law, the remedies provided for in this Franchise Agreement and the Cable Ordinance are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the County at law or equity; provided however, cumulative remedies may not exceed the total wrong involved.

- (b) No Election of Remedies. Without limitation, the withdrawal of amounts from the letter of credit in section 10 or the recovery of amounts under the bond, insurance, indemnity or liquidated damages provisions of this Franchise Agreement shall not be construed to be: an election of remedies; a limit on the liability of the Franchisee under this Franchise for damages or otherwise; or an excuse of faithful performance by the Franchisee.
- (c) Rights of County. In addition to exercising any of the other remedies provided in this Franchise Agreement or the remedies available under applicable law, the County may revoke this Franchise and void this Franchise Agreement if:
- (1) Franchisee attempts to or does practice any fraud or deceit in its conduct or relations under this Franchise Agreement or in the process of being granted the rights, authority, power, privileges and permission herein; or
 - (2) Franchisee attempts deliberately to evade any material provision of the Cable Ordinance or this Franchise Agreement; or
 - (3) Franchisee fails to correct any material breach of the Cable Ordinance or this Franchise Agreement, after written notice and opportunity to cure; or

- (4) Franchisee repeatedly violates the Cable Ordinance or this Franchise Agreement regardless of whether any single provision violated is deemed immaterial; or
 - (5) Franchisee abandons its Franchise. Without limitation, the failure of Franchisee to comply with the deadlines established herein, its failure to provide or maintain the required reports and records, or its failure to comply with applicable law shall be deemed a material violation of this Franchise Agreement.
- (d) Rights of Franchisee. Notwithstanding any provision of the Cable Ordinance to the contrary that could be read to limit the Franchisee's rights, before the County revokes this Franchise, it shall:
- (1) Provide written notice to the Franchisee describing with reasonable particularity the nature of the violation;
 - (2) Permit the Franchisee an opportunity to be heard on the issue; and
 - (3) If the Franchisee timely requests an opportunity to be heard, allow the Franchisee to appear and present information relevant to determining whether the violation occurred, and the appropriate remedy for the violation, if any. The parties agree that K.C.C. § 6.27A.240 satisfies the requirements of this section 20(d).

(e) Procedures Prior to Revocation.

- (1) Notice of Violation. County shall provide Franchisee with a detailed written notice of any Franchise violation upon which it proposes to take revocation action and a ninety (90) Day period within which Franchisee may demonstrate that a violation does not exist, or cure the alleged violation; or if the violation cannot be cured within the ninety (90) Day cure period, present a cure plan to the County for review and approval, which approval shall not be withheld, delayed or conditioned unreasonably.
- (2) Default. If Franchisee fails to disprove or cure the violation within ninety (90) Days in accordance with the approved cure plan, then the County may declare the Franchisee in default, which declaration must be in writing stating with reasonable particularity the nature of the violation.
- (3) Hearing Available to Franchisee. Within fifteen (15) Days after receipt of a written declaration of default from the County, Franchisee may request, in writing, a hearing before the County or its agent, in a public proceeding. Such hearing shall allow Franchisee an opportunity to dispute such default declaration and shall be held within forty-five (45) Days of the receipt of the request therefore and a decision rendered within thirty (30) Days after the conclusion

of the hearing. Any decision shall be in writing and shall be based upon written findings of fact.

- (f) Duty to Exhaust Remedies. In the event of any dispute between the Franchisee and the County arising out of this Franchise Agreement or the Cable Ordinance, the Franchisee agrees to pursue and exhaust all administrative remedies pursuant to law prior to pursuing any legal or equitable remedy.
- (g) Effect of Revocation or Forfeiture. The revocation or forfeiture of the Franchisee's rights under this Franchise shall not affect any of the County's rights under this Franchise or applicable law. The Franchisee shall continue to be bound, for example, by any duties it may have under the Cable Ordinance to continue to provide service.

21. Abandonment.

- (a) Effect of Abandonment. If the Franchisee abandons its Cable System during the term of this Franchise or fails to operate its Cable System in accordance with its duty to provide continuous service, the County, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Franchisee restores service under conditions acceptable to the County or until this Franchise is revoked and a new Franchisee selected by the County is providing service; or obtain an injunction requiring the Franchisee to continue operations. If the County is

required to operate or designate another entity to operate the Cable System, the Franchisee shall reimburse the County or its designee for all reasonable out-of-pocket costs and damages incurred that are in excess of the revenues from the Cable System.

(b) What Constitutes Abandonment. The County shall be entitled to exercise its option and obtain any required injunctive relief if:

- (1) The Franchisee fails to provide Cable Services in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for two hundred forty (240) consecutive hours in the absence of a force majeure event; or
- (2) The Franchisee, for any period, willfully and without cause refuses to provide Cable Services in accordance with this Franchise Agreement.

22. Exercise of Right to Purchase.

(a) Option to Purchase. The County shall have the option to purchase the Cable System to the extent consistent with federal law.

(b) Arbitration.

- (1) If the County exercises a right to purchase the Cable System pursuant to the Franchise Agreement, and the parties are unable to agree on a price for the purchase of the Cable System, or the terms and conditions of the sale, the price of

the Cable System may be determined by arbitration as set forth below.

- (2) The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The Cable Office and the Franchisee shall each select a qualified arbitrator. The two arbitrators selected shall select a third qualified arbitrator, and the three arbitrators will constitute a panel whose decision is binding on the County and the Franchisee. The fees of the arbitrators selected by each party shall be paid by that party, and the fees of the third arbitrator shall be paid one-half each by the County and the Franchisee. The other costs of the proceeding shall be shared equally by the County and the Franchisee.
 - (3) Notwithstanding the above, nothing shall require the County to submit the matter to arbitration should it purchase a Cable System through an exercise of the right of eminent domain.
- (c) Rights Not Waived. The purchase option provided under section 22(a) does not waive any rights the Franchisee may have under applicable law.

23 Miscellaneous Provisions.

- (a) Governing Law. This Franchise Agreement shall be governed in all respects by the laws of the State of Washington and the United

States of America. All actions brought by the Franchisee against the County, whether brought in State or federal court, shall be brought in a court located in King County, Washington, unless prohibited by law.

- (b) Force Majeure. The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, labor strikes, floods or other weather events, or other circumstances beyond the Franchisee's reasonable control; and this Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health or safety of the Franchisee's employees or the integrity of its property, or the health or safety of the public, or the integrity of public Rights-of-Way, public property, or private property; and only if the Franchisee has notified the County in writing of the reason for the inability within three (3) business days of the Franchisee's discovery of the reason or the existence of such a force majeure event is manifest from events and circumstances.
- (c) Connections to System; Use of Antennae. Subject to reasonable provisions to prevent signal and service theft, Subscribers shall have the right to use their own remote control devices and

converters, and other similar customer premise equipment with Franchisee's Cable System.

- (d) Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period of time. For example, if on January 1, the Franchisee is directed to file action within ten (10) Days, the action must be completed no later than midnight, January 11.
- (e) Time of Essence. In determining whether the Franchisee has substantially complied with its Franchise, the parties agree that time is of the essence to this Franchise Agreement.
- (f) Captions. The captions and headings of this Franchise Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Franchise Agreement.
- (g) Counterparts. This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one Franchise Agreement binding on all parties hereto,

notwithstanding that all parties shall not have signed the same counterpart.

AGREED TO AS OF THE ____ DAY OF _____, 2013.

WAVEDIVISION I, LLC

By: 

Name: James A. Penney

Title: Executive Vice President

KING COUNTY, WASHINGTON

By: 

Name: Dow Constantine

Title: King County Executive

APPENDIX A

DESCRIPTION OF FRANCHISEE'S CABLE FACILITIES

Franchisee's facilities are located under County streets, alleys, roads and compatible utility easements throughout King County in the following described boundaries:

All those portions of unincorporated King County excluding all incorporated Cities located in the following townships and Ranges:
Township 26, Ranges 4,5,6,7,8,9,10,11,12 and 13, Township, 25, Ranges 5,6,7,8,9,10,11,12 and 13, Township 24, Ranges 6,7,8,9,10,11,12 and 13, Township 23, Ranges 3,4,5,6,7,8,9,10,11, and 12, Township 22, Ranges 5,6,7,8,9,10 and 11, Township 21, Ranges 4,5,6,7,8,9,10,11 and 12, Township 20, Ranges 6,7,8,9,10,11 and 12, Township 19, Ranges 6,7,8,9,10 and 11.

The foregoing includes all sections within the described townships and ranges.

Appendix B System Design Specifications

The rebuilt system and all new construction will new capable of meeting or exceeding the following requirements.

- Bandwidth** 54 to 750 MHz downstream
5 to 40 MHz upstream
- Aural Center Frequency** 4.5 MHz +/- 5 kHz above visual carrier
- Video Carrier Level** Signal at tap
Highest Analog Channel +12 dB to +19 dB
Lowest Analog Channel +10 dB to +19 dB
*(FCC Requirements:
Shall not be less than 0 dBmV at the subscriber terminal
Shall not be less than 3 dBmV at the end of a 100-foot drop)*
- Video to Audio Carrier Level** The level of Aural Carrier must be maintained 10 to 17 dB below the associated video carrier or as otherwise specified by the FCC and shall not interfere with the upper adjacent channel as measured at the subscriber terminal.
- In Channel Frequency Response** Must be +/- 2 dB from 0.75 to 5.0 above the lower channel boundary as measured at the subscriber terminal.
- Signal/Noise Ratio** Minimum 46 dB across 4 MHz dB as measured at the subscriber terminal. *(FCC requirement is 43 dB).*
- Carrier/Interference** Includes coherent disturbances such as Intermodulation, Second and Third order distortions, must be a minimum of 52 dB. *(FCC requirement is a minimum 47 dB for HRC as measured at the subscriber terminal)*
- Terminal Isolation** Minimum of 18 dB
- Hum or Repetitive Transients** Must not exceed 3% of the visual signal level, as measured at the subscriber terminal.
- Chrominance-Luminance Delay** Less than +/- 100 nanoseconds *(FCC requirement is +/- 170 nanoseconds)*
- Differential Gain** Shall not exceed +/- 20%
- Differential Phase** Shall not exceed +/- 10 degrees

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The system will comply with Sec. 76-614 pertaining to the monitoring, logging, and leakage repair requirements related to signal leakage and/or ingress of the network.

APPENDIX C
FRANCHISE BOND

Bond: _____

GL Code: _____

Risk File: _____

Location: Seattle, Washington

KNOW ALL MEN BY THESE PRESENTS, That, **Wave Division I, LLC**, as Principal, and _____, a corporation of the State of _____, as Surety, are held and firmly bound unto **County of King, Seattle**, as Obligee, in the sum of **Twenty-Five Thousand & No/100 Dollars** (\$25,000.00), lawful money of the United States of America, to be paid unto said Obligee, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a written agreement dated _____, with the Obligee which grants a Franchise to the Principal to use Obligee's public streets and places to transmit and distribute electrical impulses through fiber optical cable and open line-coaxial antenna system located therein. Principal has agreed to faithfully perform and observe and fulfill all terms and conditions of said Franchise agreement referred to above and said agreement is hereby made a part of this bond with like force and effect as if herein set forth in length.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above named Principal, its successors or assigns, does and shall well and truly observe, perform and fulfill its obligation as set forth in the above-mentioned Franchise agreement, for which a bond must be posted, then the above obligation to be void; otherwise to remain in full force and effect.

The bond is subject, however, to the following express conditions:

FIRST: That in the event of a default on the part of the Principal, its successors or assigns, a written statement of such default with full details thereof shall be given to Surety promptly, and in any event, within thirty (30) days after the Obligee shall learn of such default, such notice to be delivered to Surety at its Home Office in _____ by registered mail.

SECOND: That no claim, suit or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within twelve (12) months after the effective date of any termination or cancellation of this bond.

THIRD: That this bond may be terminated or canceled by Surety by thirty (30) days prior notice in writing to Principal and to Obligee, such notice to be given by certified mail. Such termination or cancelation shall not affect any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation. The liability of the Surety shall be limited to the amount set forth above and is not cumulative.

FOURTH: That no right of action shall accrue under this bond to or for the use of any person other than the Obligee, and its successors and assigns.

IN WITNESS WHEREOF, THE ABOVE BOUND PRINCIPAL AND THE ABOVE BOUND SURETY HAVE HEREUNTO SET THEIR HANDS AND SEALS ON THE ____ DAY OF _____, 20__.

WAVE DIVISION I, LLC

By: _____

By: _____

Attorney-in-fact

APPENDIX D

Fiber Route Description:

Route 1: Duvall Police Station to current KC INET fiber access point near New KCLS Duvall Library.

Construct a 48-strand singlemode fiber connection between Duvall Police Station and current KC INET fiber access point near New KCLS Duvall Library.

The cable route distance is approximately 900 ft.

Route 2: Duvall Fire Department to KC INET fiber access point near New KCLS Duvall Library.

Construct a 12-strand singlemode fiber connection between Duvall Fire Department and current KC INET fiber access point near New KCLS Duvall Library and splice the fiber from KC INET fiber access point near New KCLS Duvall Library to **Route 1** fiber to reach Duvall Police Station.

The cable route distance is approximately 700 ft.

Route 3: Riverview School district admin office – Duvall to KC INET fiber access point near New KCLS Duvall Library.

Construct a 12-strand singlemode fiber connection between Riverview School district admin office – Duvall and current KC INET fiber access point near New KCLS Duvall Library and splice the fiber from KC INET fiber access point near New KCLS Duvall Library to **Route 1** fiber to reach Duvall Police Station.

The cable route distance is approximately 800 ft.

Route 4: Duvall City Hall to KC INET fiber access point near New KCLS Duvall Library.

Construct a 12-strand singlemode fiber connection between Duvall City Hall and current KC INET fiber access point near New KCLS Duvall Library and splice the fiber from KC INET fiber access point near New KCLS Duvall Library to **Route 1** fiber to reach Duvall Police Station.

The cable route distance is approximately 450 ft.

Route 5: Carnation City Hall to Carnation Treatment Plant.

Construct a 24-strand singlemode fiber connection between Carnation City Hall and Carnation Treatment Plant.

The cable route distance is approximately 1600 ft.

(1) The fiber optic cable shall be construed to exceed the following standards:

(a) The fiber shall be singlemode fiber capable of operating at both 1310 nm and 1550 nm.

(b) The fiber must meet or exceed specifications outlined in AT&T Practice 626 108 001, Issue 2, "Generic Specification for Fiber Optic Outside Plant Cable,"

(c) The fiber shall introduce a loss of no more than .35 dB/km at 1310 nm and .25 dB/km at 1550 nm. The fiber shall be depressed clad.

(d) The fiber shall not be dispersion shifted.

(2) The fiber optic terminations shall meet the following specifications:

(a) Type. All fiber shall be terminated with SC Angled Polished connectors.

(b) Terminations. All terminations to SC connectors shall have a loss no greater than .3 dB per termination.

(c) Fusion Splices. All fusion splices shall have a loss of no greater than 0.1 dB per splice. Average loss numbers should be significantly less than this.